



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1993

Ms. Barbara E. Elliott
City Attorney
City of Bedford
P.O. Box 157
Bedford, Texas 76095-0157

OR93-437

Dear Ms. Elliott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19434.

The City of Bedford (the "city") has received a request for "the complete report from Arthur Anderson and Company" for the proposed conference and fine arts center. You claim the information is excepted under sections 3(a)(6) and 3(a)(11) of the Open Records Act.

You state that you received the initial request for information on January 28, 1993. The city informed the requestor by a letter dated January 29, 1993, that the report was "tentative and preliminary" and would not be released. The city then received a letter questioning its decision not to release the information on February 5, 1993. The city responded by a letter dated February 10, 1993, after the ten day deadline had expired, that the requested information "was not an open record under the Open Records Act exceptions of Section [3(a)(6)] and Section [3(a)(11)]." It was not until the city received the letter dated March 10, 1993, requesting copies of the correspondence between the city and the Office of the Attorney General concerning this matter, that you sought an open records ruling from this office and raised the issue of prior determinations. You now contend that the city did not seek an open records ruling from this office because the city decided to rely upon prior determinations of this office regarding preliminary drafts.

Section 7(a) of the Open Records Act provides that:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that *it* falls within one of the exceptions, the governmental body within a reasonable time, *no later than ten calendar days*, after receiving a written request *must request a decision from the attorney general* to determine whether the information is within that exception. *If a decision is not so requested, the information shall be presumed to be public information.* [Emphasis added.]

Section 7(a) provides that a governmental body must request a decision from the attorney general within ten calendar days unless the *precise* information at issue has been determined to be excepted from required disclosure. Open Records Decision No. 435 (1986) at 2. Where only the *standard* to be applied for a particular type of information has been addressed, the *applicability* of the standard to specific information *must be determined by the attorney general*. *Id.* at 2-3. Were it otherwise, a governmental body would function as both advocate and judge in determining whether information is excepted or must be disclosed. *Id.* at 2. Only where fungible information is at issue is it appropriate to rely on a previous determination of this office. *See generally* Open Records Decision No. 600 (1992) at 8-9 (Form W-4 of the Internal Revenue Service is confidential under federal law). The precise information at issue here has not been addressed by a prior determination of this office nor is it fungible information like a W-4 form. Therefore, it was inappropriate for the city to rely on prior determinations of this office.

Where requests for a decision from this office are not made within ten days, the information is presumed to be public. Open Records Decision No. 319 (1982). A governmental body must show a compelling reason to overcome this presumption, *i.e.*, that the information is confidential under some other source of law or that third-party privacy interests are at stake. *Id.*; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The governmental interests protected by sections 3(a)(3) and 3(a)(11), for example, are generally not compelling enough to overcome the heightened presumption of openness. Open Records Decision No. 473 (1987) at 3. Here, the city raised sections 3(a)(6) and 3(a)(11) after the expiration of the ten day deadline. Section 3(a)(6) and section 3(a)(11) protect only governmental interests. You have not

demonstrated any "compelling reasons" for excepting the requested information from required public disclosure. Accordingly, you must release the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section
Opinion Committee

MRC/LBC/lmm

Ref.: ID# 19434
ID# 19859
ID# 20022

Enclosures: Submitted documents

cc: Mr. Austin K. Shipe
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(w/o enclosures)